



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking on the
Commission's Own Motion to Assess and
Revise the Regulation of Telecommunications
Utilities.

R.05-04-005
(Filed April 7, 2005)

Rulemaking for the Purposes of Revising
General Order 96-A Regarding Informal
Filings at the Commission

R.98-07-038
(Filed July 23, 1998)

**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
ON THE PROPOSED DECISION OF COMMISSIONER CHONG
(GENERAL ORDER 96-B)**

NATALIE D. WALES
Staff Counsel

Attorney for the Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 355-5490
Fax: (415) 703-2262
ndw@cpuc.ca.gov

August 13, 2007

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedures (Rules), the Division of Ratepayer Advocates (DRA) submits these comments on the Proposed Decision of Commissioner Chong on Telecommunications Industry Rules, mailed July 23, 2007 (General Order 96-B PD or GO 96-B PD).

II. DISCUSSION

DRA generally supports the Telecommunications Industry Rules proposed in the General Order 96-B PD, and the Commission's incorporation of URF advice letters into those rules. DRA has concurrently filed separate comments in this proceeding on the companion Proposed Decision of Commissioner Chong that addresses Phase II issues other than those relating to GO 96-B (URF Phase II PD).¹ In those Comments, DRA has identified several

¹ Proposed Decision of Commissioner Chong, Opinion Consolidating Proceedings, Clarifying Rules for Advice Letters Under the Uniform Regulatory Framework, and Adopting Procedures for Detariffing (mailed July 23, 2007) (URF Phase II PD).

errors of fact, errors of law, and issues requiring clarification in the URF Phase II PD.² Resolving those concerns may require modifications to the Telecommunications Industry Rules proposed in the GO 96-B PD.

For example, DRA discusses in Section II.H of its Comments on the URF Phase II PD that the timeline for Commission staff review of protested advice letters may be too truncated, and could provide URF carriers an incentive to delay responding to staff discovery.³ In Section II.I (Section II, subsection letter “i”) of those Comments, DRA urges the Commission to institute a significant penalty for improperly filed advice letters, as well as to allow staff additional time to review advice letters with detariffing proposals.⁴ DRA also notes the need for clarification of some issues in Section II.J of its companion comments.⁵ If the Commission agrees with DRA’s recommendations, the rules proposed in the GO 96-B PD would need to be modified to reflect those changes.

DRA also explains in its companion comments that the Commission is legally obligated to suspend proposed tariff changes that result in rates that are not “just and reasonable,” even if the services at issue are subject to full pricing flexibility under URF.⁶ As a logical corollary, parties must be able to protest such advice letters on the basis that they would lead to “unjust” or “unreasonable” rates. The GO 96-B PD, however, asserts that “General Rule 7.4.2. of GO 96-B bars protests to an advice letter increasing a rate on the ground that the increase would be unreasonable.”⁷

General Rule 7.4.2 of GO 96-B sets forth the grounds for protesting a utility’s advice letter:

As illustrated in the following examples, a protest may not rely on policy objections to an advice letter where the relief requested in

² Comments of the Division of Ratepayer Advocates on the Proposed Decision of Commissioner Chong (URF Phase II) (August 13, 2007) (DRA Comments on URF Phase II PD).

³ DRA Comments on URF Phase II PD at Section II.H.

⁴ *Id.* at Section II.I.

⁵ *Id.* at Section II.J.

⁶ *Id.* at Section II.A.

⁷ GO 96-B PD at 20.

the advice letter follows rules or directions established by statute or Commission order applicable to the utility.⁸

General Rule 7.4.2 goes on to provide a relevant example:

Example 2. Where the Commission does not regulate the rates of a specific type of utility, an advice letter submitting a rate change by a utility of the specified type is not subject to protest on the grounds that the rates are unjust, unreasonable, or discriminatory.⁹

As discussed in DRA's companion comments on the URF Phase II PD, it would nevertheless be legal error to preclude a party from challenging a rate increase to a flexibly-priced URF service as being "unjust" or "unreasonable."¹⁰ Public Utilities (PU) Code § 451 requires the Commission to determine that "[a]ll charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable." The Commission has concluded that its obligation to make such a determination as a policy matter is satisfied by its determination in the URF Phase I decision that relevant California telecommunications markets are competitive. While DRA does not agree with that finding, DRA is not here protesting the Commission's conclusion. However, § 451 plainly contemplates also the possibility that individual consumers may protest "charges" for products or services utilities supply. The Commission's conclusion in the GO 96-B PD would foreclose any consumer from lodging a complaint pursuant to § 451 because the Commission has made a broad policy determination that competition renders all charges in all instances inherently just and reasonable. This would appear to be contrary to the purpose of the statute, which also states that "[e]very unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful."¹¹ The statutory language strongly suggests that the Commission should make specific, fact-based determinations about utility "charges" upon examination of a specific complaint. Accordingly, the Commission should modify the

⁸ D.07-01-024, Appendix A at 14.

⁹ D.07-01-024, Appendix A at 14.

¹⁰ DRA Comments on URF Phase II PD at Section II.H.

¹¹ PU Code § 451.

Telecommunications Industry Rules to clarify that such an objection does not constitute a “policy objection” under the meaning of General Rule 7.4.2.

III. CONCLUSION

For the reasons discussed above, DRA recommends that the Commission modify the GO 96-B PD to eliminate the legal and factual errors that DRA has identified in its companion Comments on the URF Phase II PD and incorporated by reference herein.

August 13, 2007

Respectfully submitted,

/s/ NATALIE D. WALES

NATALIE D. WALES
Staff Counsel

Attorney for the Office of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 355-5490
Fax: (415) 703-2262
ndw@cpuc.ca.gov

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF COMMISSIONER CHONG (GENERAL ORDER 96-B)**” in **R.05-04-005 and R.98-07-038** by using the following service:

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Executed on the 13th day of August, 2007 at San Francisco, California.

/s/ ALBERT HILL

Albert Hill

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kevin.saville@frontiercorp.com
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mflorio@turn.org
rcosta@turn.org
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bnusbaum@turn.org
lgx@cpuc.ca.gov
mlm@cpuc.ca.gov
ndw@cpuc.ca.gov
sjy@cpuc.ca.gov
tad@cpuc.ca.gov
heidi_sieck-williamson@ci.sf.ca.us
steve.bowen@bowenlawgroup.com
ahk4@pge.com
david.discher@att.com
emery.borsodi@att.com
putzi@strangelaw.net

fassil.t.fenikile@att.com
gregory.castle@att.com
gj7927@att.com
jadine.louie@att.com
james.young@att.com
jpc2@pge.com
mwand@mofo.com
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nedya.campbell@att.com
nelsonya.causby@att.com
strange@strangelaw.net
ppham@mofo.com
stephen.h.kukta@sprint.com
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cheryl.hills@icg.com
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gblack@cwclaw.com
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jim@tobinlaw.us
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sleeper@steefel.com
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mmattes@nossaman.com
edwardoneill@dwt.com
suzannetoller@dwt.com
cpuc.contact@realtelephone.net
ens@loens.com
tlmurray@earthlink.net

bgranger@pacbell.mobile.com

mgomez1@bart.gov
douglas.garrett@cox.com
doug_garrett@icgcomm.com
grs@calcable.org
ll@calcable.org

mp@calcable.org
rschmidt@bartlells.com
robertg@greenlining.org
thaliag@greenlining.org
pucservice@dralegal.org
pucservice@dralegal.org
palle_jensen@sjwater.com
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jchicoi@czn.com
g.gierczak@surewest.com
cborn@czn.com
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kdavis@o1.com
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kelly.faul@xo.com
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clower@earthlink.net
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jpeck@sempirautilities.com
mzafar@sempirautilities.com
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info@tobiaslo.com
ashm@telepacific.com
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vvasquez@pacificresearch.org
judypau@dwt.com
katiensel@dw.com

tregtremont@dwt.com
ahammond@usc.ed
lex@consumercal.org
lex@consumercal.org
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john_gutierrez@cable.comcast.com
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